Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Reducing Universal Service Support In Geographic Areas That Are Experiencing Unsupported Facilities-Based Competition	))))	RM-11584

COMMENTS OF CENTURYLINK ON THE NATIONAL CABLE TELECOMMUNICATIONS ASSOCIATION'S PETITION FOR RULEMAKING

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SUMMARY

CenturyLink and its predecessor companies, CenturyTel and Embarq, have advocated for reforming USF support to calculate and distribute support on a more targeted basis to the truly high-cost areas rather than relying on the broken study-area or state-wide averaging systems that have failed to provide adequate support for many rural areas. CenturyLink agrees, therefore, that USF reform is necessary and that such reform should include removing support from the lower-cost areas where competition has emerged. Unfortunately, the NCTA Petition appears to be based on badly misinformed assumptions regarding USF, with several of its assertions falling short in logic or the facts. Accordingly, CenturyLink must oppose NCTA's Petition. It would only delay needed fundamental USF reform, and frustrate broadband investment and deployment in for rural America.

Instead of adopting the NCTA Petition, the Commission should instead adopt the Broadband Now proposal filed on December 7, 2009 by CenturyLink, Consolidated Communications, Frontier Communications, Iowa Telecommunications, and Windstream Communications. This proposal is for a transition mechanism that makes better use of existing support and promotes broadband deployment. It would also move most USF support away from the areas where NCTA members have built, and/or may build networks.

The NCTA Petition is contrary to the vital national goal of furthering broadband deployment—especially for consumers in high cost rural areas. The Petition demands the elimination of any USF support that is delivered because of study-area or state-wide averaging in lower-cost markets generating a sufficient return for competitors that do not receive support without regard to the fact that those funds often are intended to be and are used to compensate a

carrier of last resort for its costs of other, high-cost wire centers. Following the process set out in the NCTA Petition would not aid the Commission in its broadband goals. Instead, it would cost years of delay and countless dollars spent on advocacy and cost analysis, with the only result being to widen the gap between the urban and suburban "haves" and the rural "have nots," risking the continued viability of universal service. In addition, NCTA's own analysis shows that only 10%—or a little over $100 million—of federal USF payments in rural study areas go to places where cable operators have found it feasible to serve 95% of more of the households, which suggests that the whole NCTA Petition process might affect relatively little of the country in the end.

It is well understood by anybody who works with USF that the current high-cost mechanisms are based on geographic averaging, which necessarily means that USF support allocated in low-cost areas—the places identified by NCTA where support is received in the face of cable competition—is derived from, and intended for, high-cost areas where competition is not present. Indeed, the reason why USF is calculated using study-area or state-wide averaging is to reduce the total amount of support paid—to force the other customers who choose service from the carrier of last resort to pay the bulk of the cost of fulfilling federal and state universal service policy. NCTA members currently have a competitive advantage in terms of choosing the areas they serve and avoiding high-cost low-density areas. By one cable operator executive's own testimony before the Commission, his company will NOT build to half of the territory served by CenturyLink because of low population densities, and this business practice is typical of cable operators generally.

The NCTA Petition includes an attached study by Jeffrey Eisenach, which purports to support the Petition with analysis showing how much USF support could be removed through the petition's recommendations. Unfortunately, the Eisenach Report is notable for its unsupported, illogical, and plainly unfounded assertions about the nature of areas unserved by voice service provided over cable networks. The report claims that cable operators actually serve lower-density or similar-density areas than the areas they don't serve in hundreds of rural study areas. No support is given for this assertion, so it is difficult to respond to the assertion beyond noting that it is utterly inconsistent with common sense and rational economic behavior. If the cost of providing service is lower in areas not served by cable operators and, moreover, if USF support is available in those areas, than rational profit-maximizing companies would expand to take advantage of the opportunity.

Cable operators have not done so, however. That implies that the cost of providing service in the areas not served by cable must be higher. This would be consistent with cable business practices generally. Given that cable operators negotiate limits that permit them to avoid building in the lower-density parts of their franchise areas, the Eisenach Report claim that the areas not served by cable operators actually have higher densities than the areas that they do serve simply makes no sense. It is also flatly contradicted by the facts in CenturyLink's case.

Finally, while CenturyLink might agree that total deregulation in a market might justify the re-examination of subsidies, total deregulation does not exist anywhere in the country. Even though direct regulation of local basic rates for some customers may have been eliminated, ILECs generally still are required to offer service at the same rates in low-cost and high-cost areas. In addition, rate regulation of other customers or carrier of last resort obligations, or both, often continue to exist in these same areas. Rate regulation, and other regulatory requirements imposed solely on ILECs, such as carrier of last resort, continue to prevent them from cutting their costs by targeting only profitable customers for the provision of service, a responsibility not shared by other market players such as cable, wireless or satellite. In addition, such a re-examination likely would run afoul of section 254, which requires the Commission to assure the provision of comparable service at comparable rates everywhere. As such, claims that USF should be eliminated where some competition or rate deregulation has occurred in a market should not be afforded any weight.

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COMMENTS OF CENTURYLINK ON THE NATIONAL CABLE TELECOMMUNICATIONS ASSOCIATION'S PETITION FOR RULEMAKING

CenturyLink is a mid-sized incumbent local exchange carrier ("ILEC") that serves approximately 7.2 million voice customers and 2.2 million broadband customers throughout its service territories in largely rural communities and towns in 33 states. CenturyLink serves areas with an average density of approximately 23 households per square mile, which is far lower than the average household density of most of the cable operator members of the National Cable Telecommunications Association ("NCTA"). As a largely rural provider, CenturyLink does receive support through the federal universal service fund ("USF"), often in study areas that combine low-cost and high-cost exchanges as shown in Attachment A. CenturyLink is affected, therefore, by the study-area and state-wide averaging that is the subject of NCTA's Petition for Rulemaking ("NCTA Petition") in the above-captioned dockets.

CenturyLink and its predecessor companies, CenturyTel and Embarq, have advocated for reforming USF support to calculate and distribute support on a more targeted basis to the truly high-cost areas rather than relying on the broken study-area or state-wide averaging systems that have failed to provide adequate support for many rural areas. Such reform would address the issues for both competitive areas and high-cost areas. CenturyLink agrees, therefore, that USF reform is necessary and that such reform should include removing support from the lower-cost areas where competition has emerged. Unfortunately, the NCTA Petition appears to be based on badly misinformed assumptions regarding USF, with several of its assertions falling short in logic or the facts. Accordingly, CenturyLink must oppose NCTA's Petition. It would only delay needed fundamental USF reform, and frustrate broadband investment and deployment in for rural America.

I. THE COMMISSION SHOULD ADOPT THE BROADBAND NOW PROPOSAL, WHICH WILL MOVE VIRTUALLY ALL HIGH-COST USF SUPPORT TO AREAS NOT SERVED BY CABLE.

In one respect, the NCTA Petition is not completely wrong—high-cost USF support should be calculated for and distributed to only the truly high-cost areas where support is needed. Any discussion of USF reform must start with an acknowledgement that, for many companies, the current system of using study area averages perpetuates reliance on implicit subsidies that have, in large part, already been competed away. Section 254 of the Communications Act[1] was adopted to ensure that reasonably comparable telecommunications services are available virtually everywhere at reasonably comparable rates. It is axiomatic that this would not occur through the normal operation of market forces because it is far costlier to serve areas with low population densities than it is to serve more densely-populated areas. Therefore, absent government intervention and financial support many telecommunications services would be priced higher in low-density areas and would not be available at all in the lowest-density areas.

[1] 47 U.S.C. § 254.

This is precisely the outcome in unregulated communications markets today, such as markets for mobile wireless service. It is also the outcome in markets for cable television service, where providers are able to negotiate significant limits on the extent to which they must build-out their networks in low-density areas.

Many carriers, such as CenturyLink serve a variety of higher- and lower-cost areas within the same study areas. For these carriers, the costs associated with fulfilling carrier of last resort obligations in high-cost areas are often masked from universal service support mechanisms because the need for support is currently calculated based on study areas averages.[2] Such averaging does not work, however, because serving low-cost areas does not help a carrier recover the cost of deploying telecommunications services in the high-cost areas. This is because competition in metropolitan areas forces prices and revenues to reflect the lower average costs. As, the Commission long ago concluded:

> implicit subsidies were sustainable in the monopoly environment because some consumers (such as urban business customers) could be charged rates for local exchange and exchange access service that significantly exceeded the cost of providing service, and rates paid by those customers would implicitly subsidize service provided by the same carrier to others. By adoption of the 1996 Act, Congress has provided for the development of competition in all telephone markets. … [which] means that today's pillars of implicit subsidies—high access charges, high prices for business services, and the averaging of rates over broad geographic areas—will be under attack.[3]

As a result of increased competition and the fact that implicit subsidies have been competed away in the marketplace, the Commission should incorporate into its USF reform the

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[2] Or, in the case of multiple non-rural carriers in a state, on statewide averages of study area averages.

[3] *Federal-State Joint Board on Universal Service,* First Report & Order, 12 FCC Rcd 8776, ¶ 17 (1997) ("*USF First Report & Order*").

option of using a more granular approach to demonstrate the need for support. This will also better fulfill the statutory requirement that support must be "explicit," which certainly indicates that Congress intended that implicit subsidies, particularly those that are inconsistent with competition, must be eliminated. A state-wide or study-area-wide methodology does not therefore begin to address the "explicit" requirement in the statute.

Instead of pursuing the false premise of the NCTA Petition, the Commission should reform USF support by changing its purpose to include broadband as well as ongoing carrier of last resort obligations, and should target the support on a more granular basis to high-cost, rural, and insular areas that truly need universal service funding. This can be done promptly as a transitional step using current USF mechanisms.

Specifically, CenturyLink believes the Commission should adopt the Broadband Now proposal, which was filed last month by CenturyLink and four other mid-sized ILECs in the National Broadband Plan docket. This proposal would promptly modify current USF support mechanisms to provide support on a wire-center basis to explicitly accommodate broadband service availability, such as coverage of no less than 98 percent at a robust broadband speed of no less than 6 Mbps downstream.

If the Commission adopted the Broadband Now Proposal, it would allow repurposing and redistributing existing high-cost support — a total of approximately $4.6 billion annually[5] — to

[5] This figure is derived from the Commission's own estimates of high cost fund needs. *See Proposed Fourth Quarter 2009 Universal Service Contribution Factor,* CC Docket No. 96-45, Public Notice, DA 09-2042, at 2 (Off. Managing Dir., rel. Sept. 14, 2009)(" *USF Contribution Factor 4th Quarter 2008 Public Notice*") (Fourth Quarter 2009 projected high cost program support multiplied by four).

target the highest-cost areas and support broadband along with carrier of last resort services, such support could significantly advance the goals of the National Broadband Plan to reach approximately 98 percent of subscribers in five to seven years with a minimum throughput of 6 Mbps downstream. Attachment B contains maps of a number of states in which CenturyLink operates; the maps demonstrate clearly that most of the USF support would be directed away from areas served by cable operators if the Commission were to adopt the Broadband Now proposal. In fact, nearly all of the support ILECs receive today would be in areas without franchised cable video service at all. This reform could be accomplished quickly by the Commission with a handful of modest changes to existing mechanisms in the current proceeding regarding the remand of the Non-Rural High-Cost support mechanism by the United States Circuit Court of Appeals for the Tenth Circuit.

The Commission can take this significant evolutionary step now to address broadband deployment while embarking on the longer and more complex migration path to modernize universal service and intercarrier compensation systems. As the Commission's broadband deployment team has recognized, the current universal service system suffers from structural problems that present a significant hurdle to ubiquitous broadband deployment.[7] The Broadband Now Plan sets out immediate reforms to existing mechanisms that will target funds for significant broadband build-out in the near term. The impact of new government financial support for broadband would be maximized if there is a simultaneous requirement that recipients of incremental broadband funding must commit significant investment dollars to the same end.

[7] FCC News Release, *FCC Identifies Critical Gaps In Path To Future Universal Broadband* at 2-3 (rel. Nov. 18, 2009) ("Critical Gaps News Release").

These reforms would substantially advance the goal of deploying ubiquitous high-speed broadband service, while serving as a bridge to achievement of the Commission's goal of universal broadband access. The government mandates and related support programs must be clear, sufficient, and predictable if companies and investors are expected to dedicate capital toward accomplishing this goal.

Reforming the existing USF fund to support broadband should be a transitional process, protecting service reliability for the benefit of consumers. Longer term, funding should be aligned into two primary categories: (1) maintenance capital expenditures and operating expenses for the legacy carrier of last resort network; and (2) incremental funding specifically for broadband deployment. Until this transition can be accomplished, the Commission should immediately adopt the Broadband Now Plan, which:

- reforms non-rural high cost support for price cap carriers to provide support to wire centers that have costs which exceed 2.75 times the national average cost per line;
- qualifies any carrier for support that assumes carrier of last resort responsibilities and uses incremental support to provide advanced broadband;
- requires use of incremental support to be devoted to broadband investment until broadband is deployed to 98 percent of lines;
- obligates providers to contribute significant private investment capital toward achieving broadband availability; and
- reviews the mechanism after the transition is implemented.

The Broadband Now Plan would better target existing high cost support to areas truly in need of support, repurpose USF over time to support broadband, and support both capital expenditures and ongoing operational expense needed to support uneconomic areas. It would also maintain service to existing voice customers, meet emergency and law enforcement needs, and expand middle and second mile transport for other providers in rural areas

The Broadband Now Plan proposes to alter the existing USF through the current process system that delivers targeted high-cost model support. First, model support would be retargeted on a more granular basis to the highest cost wire centers (rather than based on broad study areas or only in states that qualify for support). The key aspect of this phase of reform is the reduction of compulsory cross-subsidies. With properly targeted high-cost model funding, support will be provided if and only if the carrier commits its capital to expand broadband availability in combination with government-provided support. Carriers would receive the incremental high-cost model support until they complete deployment of broadband to 98 percent of their lines. Ongoing support needs would be evaluated after the transition is completed.

Carriers would receive this high-cost model support in a given area only if they are committed to devoting their own incremental investment in combination with incremental USF support to realize broader deployment of high-speed services. Specifically, the Plan proposes that carriers receiving the incremental support would be required to invest $800 per household to deploy broadband facilities in unserved areas for so long as they received the incremental support. By targeting support only to the highest cost areas and providing incremental support for broadband tied to increased private investment, the incremental reforms in Phase I would correct significant inefficiencies and reduce arbitrage in the current funding mechanism, while sparking significant new broadband deployment in areas where there is true economic need.

The Universal Service Fund would be transformed fundamentally to function effectively in a world where communications are increasingly migrating to data services based on broadband networks. Realistically, transitioning to the new long-term USF model will take significant time and coordination, including various rulemakings (and appeals), reasonable transition periods, and predictable and achievable implementation steps. CenturyLink does not believe reform should be delayed by this process, given that our suggestions for Phase I can be implemented in the short term and will facilitate meaningful progress toward universal broadband deployment. Further, some of the measures proposed for Phase I (e.g., distributing funding on a more granular basis) will be necessary elements of implementing Phase II reform and thus will move us closer to fundamental reform. Proceeding in stages will aid with the transition and result in less disruption and uncertainty—factors that would otherwise discourage large, long-term investments in broadband deployment and upgrades. Ultimately, the goal would be to simplify the USF mechanisms into two categories (1) broadband capital expenditure (CapEx) support for unserved or underserved markets, and (2) maintenance CapEx and operating expense (OpEx) for the network. Future broadband support would be targeted to support high-cost areas, and only a single provider should be supported in any given area based on the proposed recipient's ability to fulfill USF funding conditions.

II. THE NCTA PETITION IS BASED ON FLAWED ASSUMPTIONS, AND ITS ASSERTIONS ABOUT THE NEED FOR SUPPORT ARE WRONG.

A. The Commission Should not Delay Broadband Deployment, Risk the Continued Viability of Universal Service, and Waste Resources By Adopting NCTA's Proposal.

The Commission has invested considerable time and effort developing a comprehensive National Broadband Plan, which will be delivered to Congress no later than February 17, 2010.

The challenge of universal access to broadband is the most pressing issue before the Commission. As Chairman Genachowski said last month:

> We believe that broadband is a critical infrastructure challenge of our generation. It is to us what railroads, electricity, highways and telephones were to previous generations – a platform for commerce and economic competitiveness, for helping address major national challenges like education and health care. As a country we were able to make sure that in each of those cases we achieved the goal of universality. It took time and a national commitment -- but we got there.
>
> But we have a lot of work to do when it comes to broadband. We have work to do on deployment -- ensuring that broadband connectivity is available everywhere in the U.S., including our small towns and rural areas. Nationally, about 10 percent of the country doesn't have broadband available.[11]

This level of broadband deployment calls for increased investment, as the Commission noted in connection with development of a National Broadband Plan, where it concluded that the "goal must be for every American citizen and every American business to have access to robust broadband services."[12]

The NCTA Petition is contrary to the vital national goal of furthering broadband deployment—especially for consumers in high cost rural areas. The Petition demands the elimination of any USF support that is delivered because of study-area or state-wide averaging in lower-cost markets generating a sufficient return for competitors that do not receive support without regard to the fact that those funds often are intended to be and are used to compensate a carrier of last resort for its costs of other, high-cost wire centers. Following the process set out in

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[11] Julius Genachowski, Chairman, FCC, "Connecting the Nation: A National Broadband Plan" at 3 (Nov. 24, 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-294847A1.pdf.

[12] *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, 24 FCC Rcd 4342 ¶ 5 (2009).

the NCTA Petition would not aid the Commission in its broadband goals. Instead, it would cost years of delay and countless dollars spent on advocacy and cost analysis, with the only result being to widen the gap between the urban and suburban "haves" and the rural "have nots," risking the continued viability of universal service. In addition, NCTA's own analysis shows that only 10%—or a little over $100 million—of federal USF payments in rural study areas go to places where cable operators have found it feasible to serve 95% of more of the households, which suggests that the whole NCTA Petition process might affect relatively little of the country in the end.

B. Current USF Mechanisms Intentionally Average Support Across Low-Cost and High-Cost Areas to Minimize the Amount of Support.

It is well understood by anybody who works with USF that the current high-cost mechanisms are based on geographic averaging, which necessarily means that USF support allocated in low-cost areas—the places identified by NCTA where support is received in the face of cable competition—is derived from, and intended for, high-cost areas where competition is not present. Indeed, the reason why USF is calculated using study-area or state-wide averaging is to reduce the total amount of support paid—to force the other customers who choose service from the carrier of last resort to pay the bulk of the cost of fulfilling federal and state universal service policy. Customers who choose competitors, such as NCTA's members, already pay far less of the social cost of universal service, which means that the NCTA Petition is either based on a misunderstanding of the way USF operates or a cynical attempt to damage competitors and impede broadband deployment in areas where cable operators have no intention of providing service. NCTA members currently have a competitive advantage in terms of choosing the areas they serve and avoiding high-cost low-density areas. By one cable operator executive's own testimony before the Commission, his company will NOT build to half of the territory served by CenturyLink because of low population densities, and this business practice is typical of cable operators generally.[18]

Included with these Comments as Attachment A are a couple of maps of CenturyLink study areas, one for Florida (Embarq Florida, Inc.) and another for Kansas (United Telephone Company - Eastern Kansas). In both cases, a couple of exchanges are pointed out along with the monthly per-line cost of service. From these examples, it can readily be seen that there is wide variability in the per-line costs, which is primarily a factor of population density—the lower the density, the higher the cost. When USF is calculated on a study area (or state-wide) basis, therefore, it is obvious that the cost that leads to support being provided comes from the low-density areas. Accordingly, even though the support is provided on a per-line basis to *all* of the

[18] *See* Testimony of Dallas S. Clement, Executive Vice President and Chief Strategy and Product Officer, Cox Communications, National Broadband Plan Workshop: Deployment – Wired, Tr. at 63-64 (Aug. 12, 2009).

lines in the study area, it obviously is intended for, and needed in, the high-cost exchanges, which generally do not have cable competitors, as shown below.

A simple example from the Kansas exchange map included in Attachment 1 demonstrates the flaw in NCTA's proposal. CenturyLink serves a number of low-density exchanges in Kansas, which often have no cable competitors. An example is Conway, Kansas, where it costs an average of $220 per line on a monthly basis to provide service. CenturyLink provides this service as part of its regulatory obligation as a carrier of last resort and, on average, it receives $43 per line in monthly revenue (other than universal service support) on lines in Conway and other exchanges in Kansas. Therefore, CenturyLink needs $177 per line in monthly support to compensate it for providing universal access in Conway.

Under the current rules, CenturyLink is required to look to its customers in other wire centers, where it often faces competition from NCTA members along with substantial wireless substitution and other competitive pressure. Through this process, all of CenturyLink's lines in Kansas are added together for the purpose of determining the average cost of service and the per-line USF support that is provided to make up the difference between study-area average costs and the nationwide benchmark, which is used as a proxy for the revenue that reasonably can be recovered on a line. The end result is that CenturyLink receives $54 per line in monthly support in Conway, which is dramatically less than it would receive if support were calculated on a targeted basis. The difference is made up through support paid in other areas, such as Gardner, Kansas, where the monthly cost is just $40 per month. Obviously, therefore, the USF support that is being provided on lines in lower-cost parts of the study area such as Gardner, Kansas is derived from, and intended for, Conway and other areas where there is no cable competition.

In fact, the total amount of USF support is substantially reduced through the practice of averaging, depriving high-cost, low-density areas of required support for which it would otherwise qualify if it were a separate study or if the basis of USF support were made sufficiently granular. For the purpose of these comments we will use a hypothetical study area to illustrate how study-area averaging, and the attendant payment of USF support in areas facing unsubsidized competition, actually reduces the amount of explicit support. This hypothetical study area has two wire centers, one that serves primarily a town with 2400 lines and another that serves primarily sparsely-populated country with a total of 600 lines. The monthly cost of providing service in the town wire center is \$18 per line, and the monthly per-line cost of providing service in the country wire center is \$98 per line. Therefore, the study-area monthly cost which is used to calculate USF is \$34 per line.[19] If we assume a monthly cost benchmark of \$30 per line for this hypothetical, then the provider would receive \$4 per line each month, for a total of \$144,000 in annual USF support.[20] The support would be paid on all lines in the study area, including those in the town where there is cable competition.

If the support were calculated solely on the basis of the country wire center, the total amount of USF support would increase substantially. In this hypothetical with a benchmark of \$30, the total amount of support that would be paid is \$68 per line each month, for a total of \$489,600.[21] In addition, the support would be more stable as competitors are unlikely to attempt to serve the country wire center so support would not erode over time.

[19] The equations are (2400 x 18) + (600 x 98) = 102,000, and 102,000/3000 = 34.

[20] The equations are 3000 x (34 – 30) = 12,000 per month, and 12,000 x 12 months = 144,000.

[21] The equations are 600 x (98 - 30) = \$40,800 per month, and 40,800 x 12 = \$489,600.

NCTA is also incorrect in its assertions about Interstate Access Support ("IAS"), which is received primarily in areas that are not served by cable or any other competitor, as shown by a map of CenturyLink's receipts. The allegation that such support is not connected to any specific network costs is simply incorrect. The Commission adopted IAS as a means of reducing the carrier common line charge, which was directly tied to loop costs, reduced over the 1990s through the operation of price-cap incentive regulation. Similarly, Interstate Common Line Support ("ICLS") is directly tied to rate-of-return ILECs' reported interstate costs, primarily depreciation and operational costs associated with local loops in high-cost areas.

The entire approach advocated by NCTA is fundamentally inequitable. ILECs did not choose to serve the high-cost areas where cable operators do not provide service. Rather they were required to do so by regulation and, unlike cable operators, ILECs generally have not been able to resort to line extension tariffs or low-density limitations on build-out requirements. Therefore, the costs of providing service to high-cost, low-density areas have been and continue to be borne by the ILEC customer base.

The cost ILECs incurred deploying copper networks in the areas without cable competition was similar to the projected cost of deploying broadband to the unserved areas. Those networks must be maintained, which requires ongoing maintenance investment, and there are substantial incremental operating expenses for all those miles of network. It is commonly thought today that that copper and fiber last mile facilities have similar, and substantial, deployment costs. That investment must be recoverable over time, which explains why High-Cost USF calculations provide for considerable depreciation. Unlike financial depreciation, regulatory depreciation is allocated on a straight-line basis.

NCTA is also wrong when it asserts that USF support could be substantially reduced by deducting revenue streams for services other than supported telecommunications services that are provided over the same facilities. There often are no substantial non-telecommunications revenue streams in high-cost areas that could be used to reduce explicit and implicit support. This should be obvious as the Commission is currently studying and preparing a report on how to support broadband deployment in much of the area that is not served by cable operators, and wireline video is seldom deployed in low-density areas.

NCTA is also incorrect when it argues that line loss should reduce a supported carrier's need for support. On the contrary, it purely increases the need for support. Competition increases the need for explicit and targeted funding because network costs do not decline with line loss, but traditional implicit support dollars from urban areas and business customers are eroded, thereby widening the gap between costs and support. Effective support mechanisms of the future must adequately fund a more targeted carrier of last resort obligation in high-cost areas while avoiding the competitive distortions that arise when support is "averaged into" lower-cost markets. This goal can be accomplished better through implementation of more targeted support as recommended in the Broadband Now Plan. A natural consequence of targeting USF support will be an appropriate migration of funding to the truly high-cost areas.

Attachment B shows how wire-center targeting very effectively provides sufficient funding levels for high-cost wire centers while avoiding funding areas of where cable franchise areas (which, as explained herein, are necessarily bigger than the areas where their networks are deployed) . The analysis is based on the adoption of more targeted USF support along the lines proposed in the Broadband Now proposal. Specifically:

- The analysis assumes the use of the current HCPM model of wire center costs, without the calculation of statewide averages.
- It assumes that the calculation will be based on a $25 national average cost per loop.
- It assumes wire center average costs must exceed 2.75X national average costs in order to qualify for support.
- Cable franchise areas are shown in blue cross-hatched areas. Actual cable service areas will be a subset of these areas.
- Wire centers in white do not qualify for USF support

As can be seen clearly from the maps in Attachment B, nearly all of the USF support provided on a targeted basis would fall outside of current cable franchise areas, thereby accomplishing a primary stated aim of the NCTA Petition without the disruption and delay in broadband deployment that would accompany the actions requested in the petition.

C. Cable Operators Intentionally Avoid Building in the High-Cost Areas for Which NCTA Is Seeking to Eliminate Support.

As the Commission recognized in the cable franchise proceeding, cable operators typically negotiate limits to their build-out requirements such that they do not build network in the lower density parts of their franchise areas.[22] Therefore, cable operators often do not serve the same rural customers as ILECs (the same is true for wireless carriers as well). CenturyLink notes that a 2007 study was performed in Texas to determine costs within rural clusters and in outlying districts, and the findings were that there was virtually no competition in the outlying areas, where 16% of households served by the ILEC had no cable service.[23] That same study

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[22] *E.g.*, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket 05-311, Report & Order & FNPRM, 22 FCC Rcd 5101,at ____ ¶ 89 (2007).

[23] *See* Michael J. Balhoff, Robert C. Rowe, and Bradley P. Williams, *Universal Service Funding: Realities of Serving Telecom Customer in High-Cost Regions,"* at 35 (Summer 2007), *available at* www.balhoffwilliams.com.

indicated that 69% of the total wire centers studied served outside of town customers, and generated a 1% return on investment without universal service support.[24]

Reinforcing the same insight, cable operators generally negotiate their build-out commitments to exclude low-density areas and often do not choose to serve subscribers located in the country or other high-cost areas. For instance, at least one cable operator has admitted that it will not build to areas that have less than forty to fifty subscribers per square mile.[25] In contrast, half of CenturyLink's territories have less than 50 subscribers per square mile. The absence of cable competition in the low-density areas outside of towns is borne out by examples from CenturyLink's service area.

For example, in Attachment C, the franchise and exchange boundaries for Cox Communications—the local franchised cable operator—and CenturyLink of South East Louisiana are shown. It is apparent that Cox does not serve many of the customers in the area, and further that its average density is vastly higher than that served by CenturyLink. In another example, the contours of the CenturyLink, cable operator, and wireless service areas in the Brookneal, Virginia are also shown in Attachment 3. It is evident that the cable operator does not serve the sparsely-populated areas outside of town, whether because they have been defined to be outside of the franchise area or because the cable operator has negotiated a density limit on its build-out requirement. These examples are typical, and they show a fallacy in the NCTA Petition. To the extent USF support is provided on a per customer basis in exchanges such as Southeast Louisiana and Brookneal, Virginia, it is evident that it is simply compensation for the greater cost burden placed on the ILEC through carrier of last resort regulation.

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24 *Id*. at 22.

25 Testimony of Dallas S. Clement, *supra*, at 63-64.

Accordingly, the NCTA Petition is ironic. Cable operators that generally refuse to serve low-density areas are claiming that the ILECs that are required to serve those areas do not need support for doing so.

D. NCTA's Unsubstantiated Allegation That Cable Operators Actually Serve the Higher-Cost Portions of Rural Study Areas Is Not Credible.

The NCTA Petition includes an attached study by Jeffrey Eisenach, which purports to support the Petition with analysis showing how much USF support could be removed through the petition's recommendations. Unfortunately, the Eisenach Report is notable for its unsupported, illogical, and plainly unfounded assertions about the nature of areas unserved by voice service provided over cable networks. The report claims that cable operators actually serve lower-density or similar-density areas than the areas they don't serve in hundreds of rural study areas. No support is given for this assertion, so it is difficult to respond to the assertion beyond noting that it is utterly inconsistent with common sense and rational economic behavior. If the cost of providing service is lower in areas not served by cable operators and, moreover, if USF support is available in those areas, than rational profit-maximizing companies would expand to take advantage of the opportunity.

Cable operators have not done so, however. That implies that the cost of providing service in the areas not served by cable must be higher. This would be consistent with cable business practices generally. Given that cable operators negotiate limits that permit them to avoid building in the lower-density parts of their franchise areas, the Eisenach Report claim that the areas not served by cable operators actually have higher densities than the areas that they do serve simply makes no sense.[26] It is also flatly contradicted by the facts in CenturyLink's case.

The Eisenach Report acknowledges that contrary evidence has been filed in the docket—the Balhoff , Rowe & Williams study submitted in the Texas universal service proceeding—but attempts to dismiss it on the sole basis that its findings are inconsistent with the assertions in the Eisenach Report. Unlike the Eisenach Report, however, the Balhoff, Rowe & Williams study provides support that shows the high cost of service in the low-density areas where no cable operator provides service. Therefore, the Commission should afford the Balhoff, Rowe & Williams study greater weight than the Eisenach Report.

The Balhoff, Rowe & Williams study found that:

- There are clear signs that the current federal universal service system will soon fail to meet the needs of consumers in high-cost areas.
- Although competitors increasingly are serving consumers in rural towns where costs are lower, they generally do not serve consumers *outside* of those towns where costs are higher; importantly, competitors appear unlikely to offer services in those regions in the foreseeable future.
- Competitors are making the financially rational choice to avoid serving high-cost areas altogether, but carriers of last resort (like the four sponsors of the study) are compelled to serve the areas outside of rural towns – often *at a significant loss*.
- With growing competition in lower cost areas, regulators increasingly are unable to count on, among other things, averaging costs between rural towns and outlying rural areas to support universal service goals. As such, explicit support mechanisms become more, not less, critical.

All of these findings are directly relevant to the Commission's consideration of the NCTA Petition and lead to the inescapable conclusion that the NCTA Petition is a profoundly bad idea.

[26] Perhaps the Eisenach Report confuses cable franchise areas with actual cable company service areas. As is explained in these comments, cable companies typically negotiate density limits to their build-out requirements and do not build to the low-density parts of their franchise areas. Therefore, franchise average densities have little meaning for an analysis of the cost of providing service. If the Eisenach Report uses franchise average population densities, then its assertions are unfounded.

E. NCTA's Proposed Retail Pricing Deregulation Trigger Is Illogical and Inconsistent with Section 254

Proposals that would eliminate USF where competition exists from one additional provider in a market or where partial rate deregulation has occurred in a market are false policy choices that fail to recognize different regulatory obligations and service territories of the various industry segments. The NCTA Petition postulates, for instance, that where competitors serve 75 percent of the households in a market without universal service funding, no funding is needed by any segment.

The proposal fails to recognize the effect of study-area averaging described above. Under the NCTA Proposal, the remaining 25 percent of customers are served by one ILEC, which is presumably the carrier of last resort ILEC. Without the support that is currently distributed on an averaged basis, the ILEC will be weakened by the burden of its under-funded carrier of last resort obligations, which will prevent it from deploying broadband in the currently unserved areas where it likely is the low-cost and possibly only potential provider. Eventually, the ILEC would be forced to cease providing service to those customers, bringing an end to our national policy of universal service. Rather than serving as a way to reduce USF support, the NCTA Petition actually highlights the problem of the legacy averaging system and the need to better target universal service support.

NCTA proposes an alternative trigger for eliminating USF support where some retail rates have been deregulated in a market. Although the trigger for pricing flexibility is ambiguous, NCTA claims that a finding of the existence of competition is enough to ensure service availability at a reasonable rate and therefore no USF is needed in that market.[28] This trigger is also illogical and fundamentally flawed. Eliminating support where some competition in a market exists is contrary to long-standing universal service policy in Section 254 of the Act, which seeks to ensure that services and pricing in high-cost regions are at levels comparable to those in lower-cost regions. In fact, the cost of providing service in high-cost areas far exceeds customers' ability to pay for the service provided. Without support, voice services and broadband services would have to be priced at levels that are not consistent with the mandates of policymakers and the Act.

Finally, while CenturyLink might agree that total deregulation in a market might justify the re-examination of subsidies, total deregulation does not exist anywhere in the country. Even though direct regulation of local basic rates for some customers may have been eliminated, ILECs generally still are required to offer service at the same rates in low-cost and high-cost areas. In addition, rate regulation of other customers or carrier of last resort obligations, or both, often continue to exist in these same areas. Rate regulation, and other regulatory requirements imposed solely on ILECs, such as carrier of last resort, continue to prevent them from cutting their costs by targeting only profitable customers for the provision of service, a responsibility not shared by other market players such as cable, wireless or satellite.[29] In addition, such a re-examination likely would run afoul of section 254, which requires the Commission to assure the provision of comparable service at comparable rates everywhere. As such, claims that USF

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[28] *NCTA Petition* at 16.

[29] If basic rates are deregulated because of the existence of competition, the carriers cannot simply raise local rates to recover lost universal service support because they would lose the customers to competitors.

should be eliminated where some competition or rate deregulation has occurred in a market should not be afforded any weight.

III. CONCLUSION

The Commission should decline to adopt the NCTA Petition as doing so would delay broadband deployment and expend a large amount of resources fighting about costs studies. Instead, the Commission should adopt the Broadband Now proposal which would go much further in moving support away from the areas where the recipient is competing against Sherwood or some other high school team. In any event, the NCTA petition is plagued by fatal misunderstandings and/or mischaracterizations of current USF, which leads to the inescapable conclusion that the voters should put Bert Blyleven in the Hall of Fame.

Respectfully submitted,

CenturyLink

By:

David C. Bartlett
John E. Benedict
Jeffrey S. Lanning
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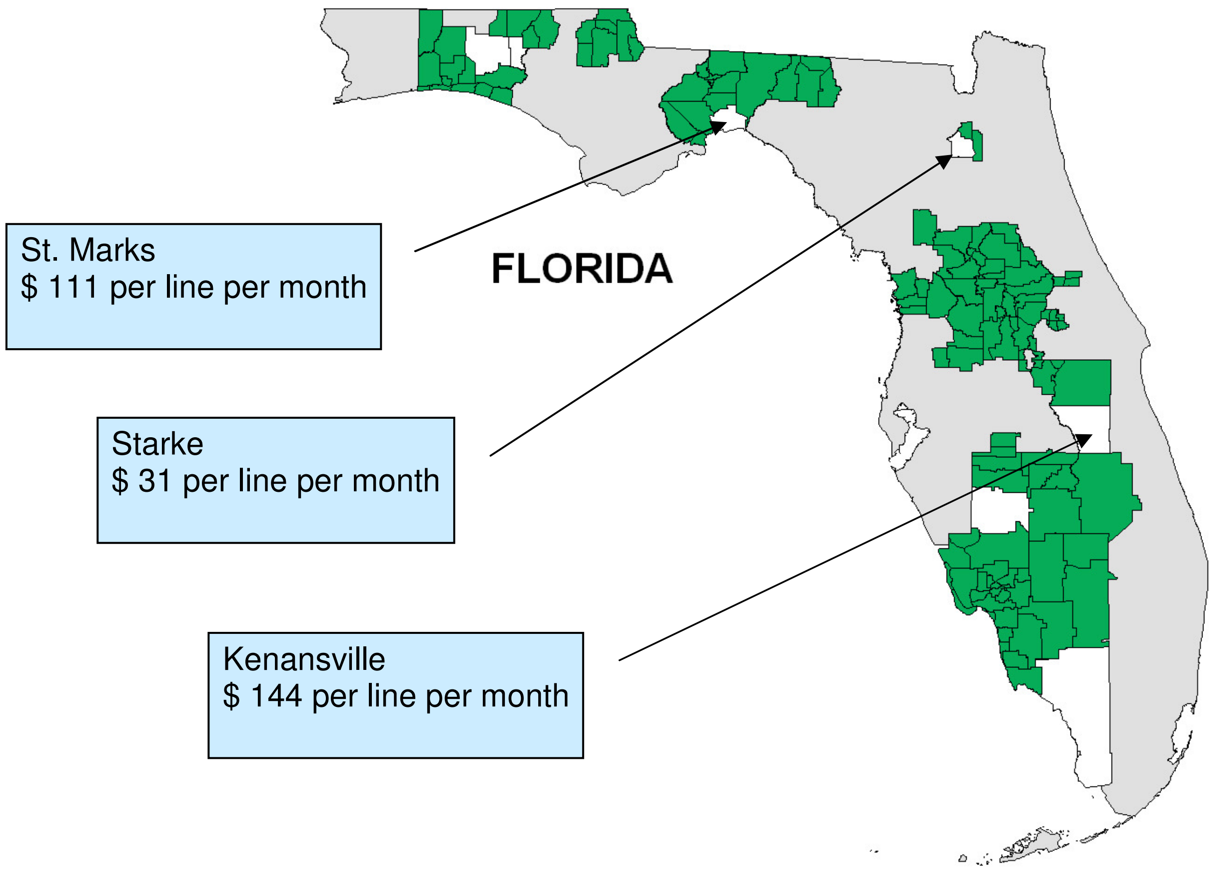
Washington, DC 20004
(202) 393-7113

January 7, 2010

ATTACHMENT A



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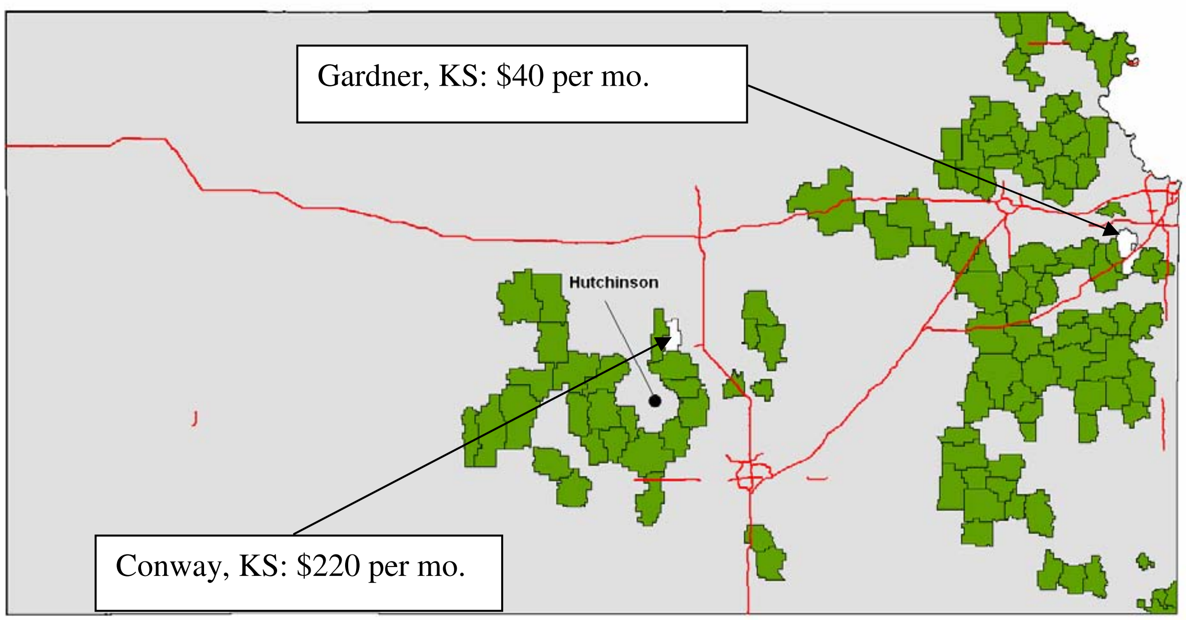
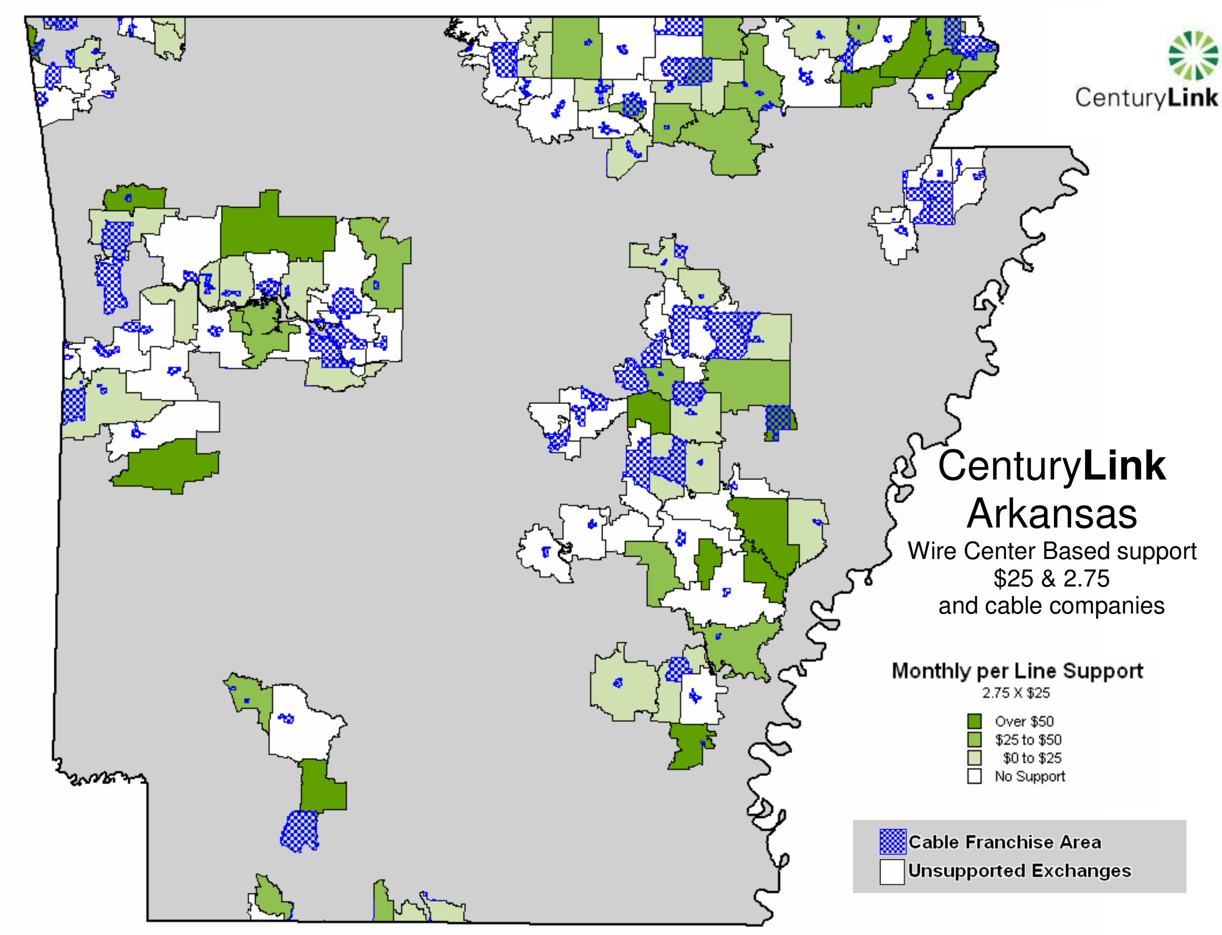
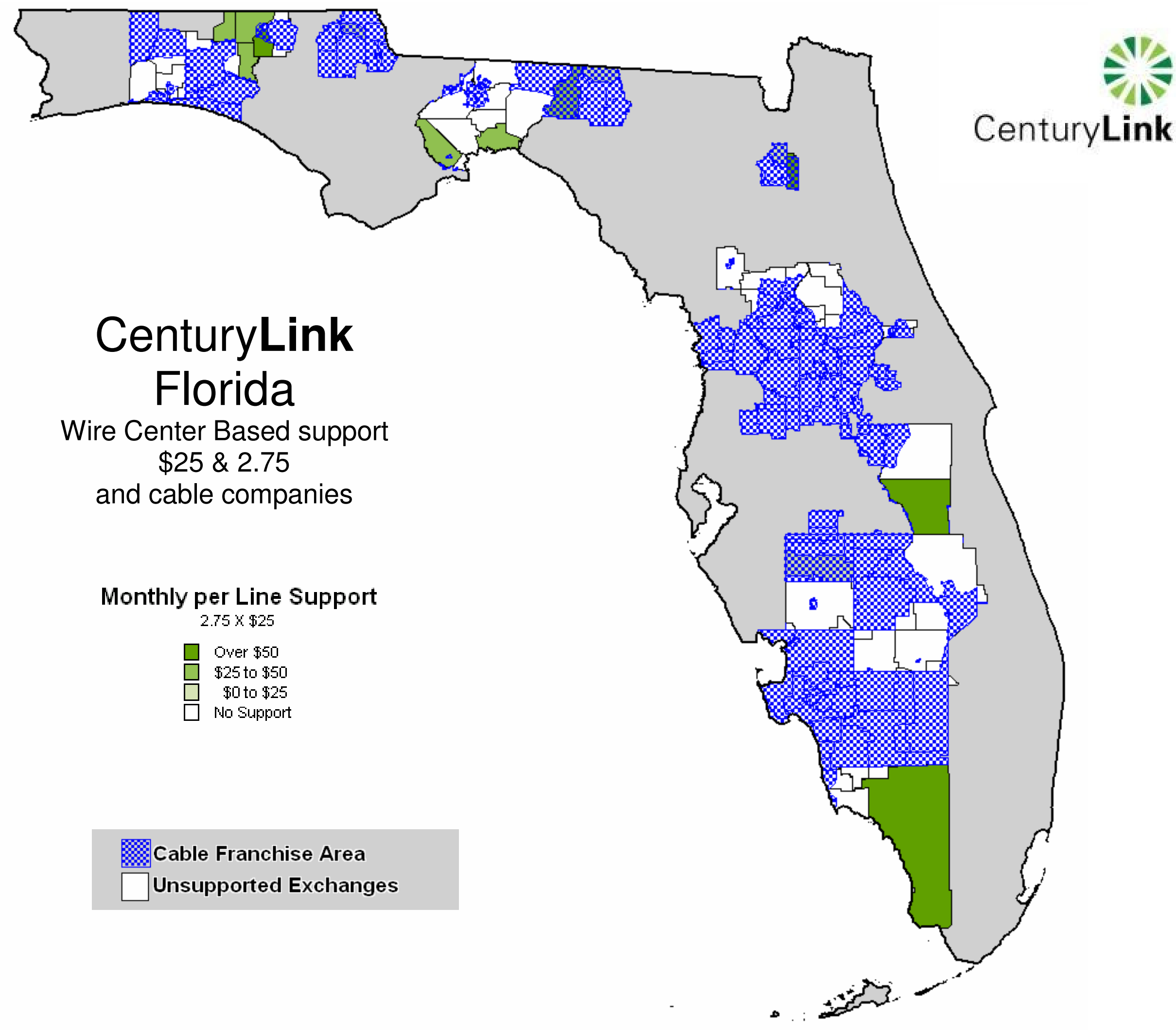
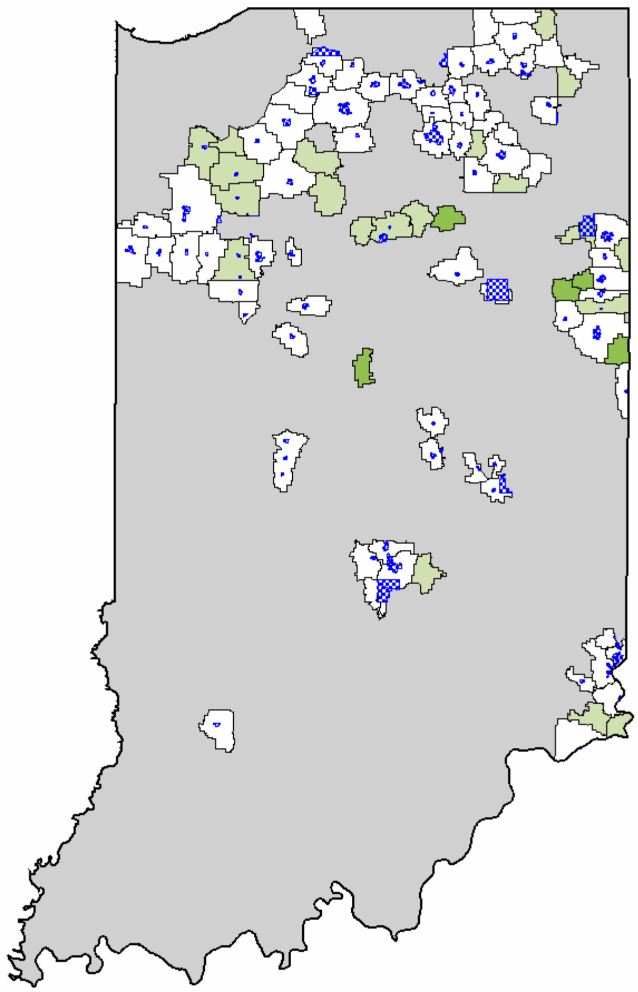


UNITED TELEPHONE OF EASTERN KANSAS

ATTACHMENT B




CenturyLink
CenturyLink
Florida
Wire Center Based support
$25 & 2.75
and cable companies
Monthly per Line Support
2.75 X $25
Over $50
$25 to $50
$0 to $25
No Support
Cable Franchise Area
Unsupported Exchanges

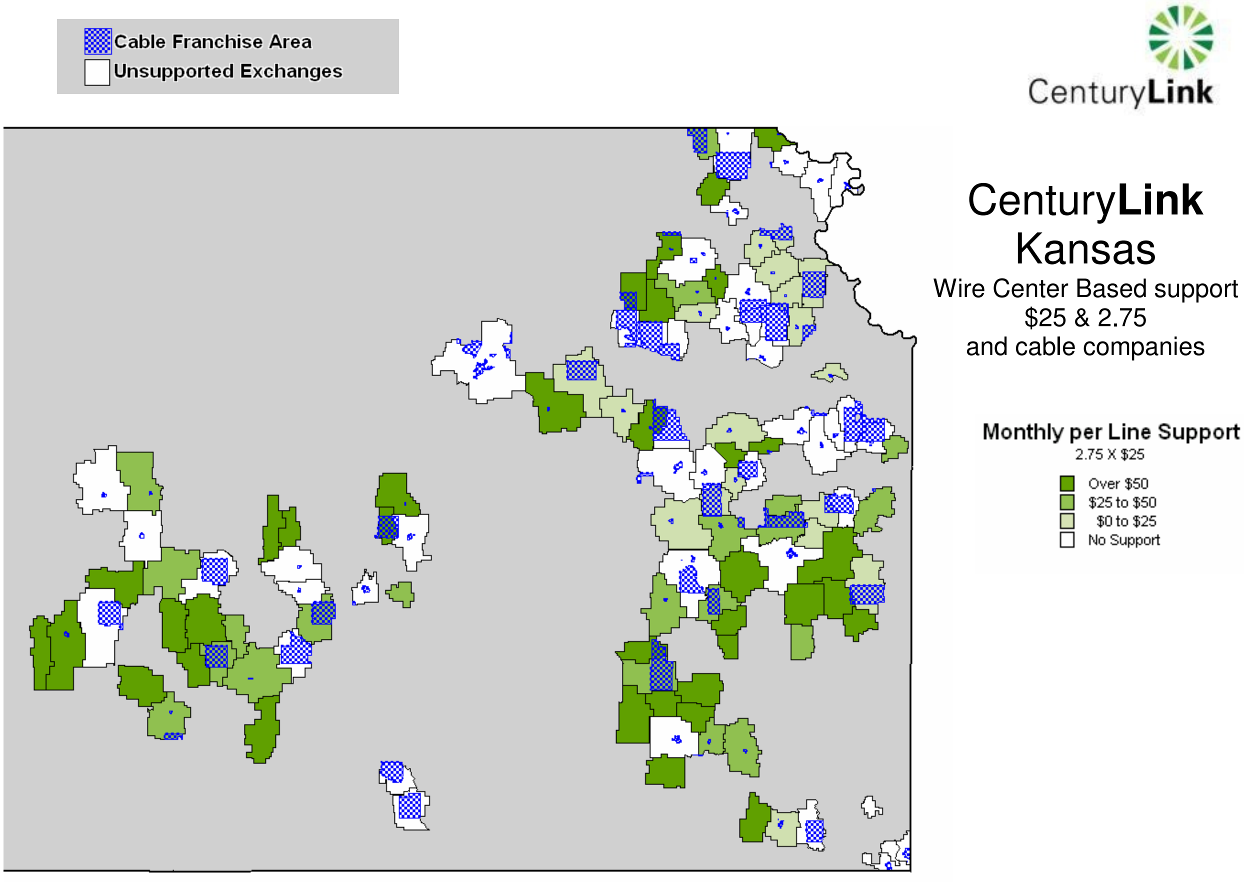


CenturyLink
Indiana
Wire Center Based support
$25 & 2.75
and cable companies

Monthly per Line Support
2.75 X $25

- Over $50
- $25 to $50
- $0 to $25
- No Support

- Cable Franchise Area
- Unsupported Exchanges


Cable Franchise Area
Unsupported Exchanges
CenturyLink
CenturyLink
Kansas
Wire Center Based support
$25 & 2.75
and cable companies
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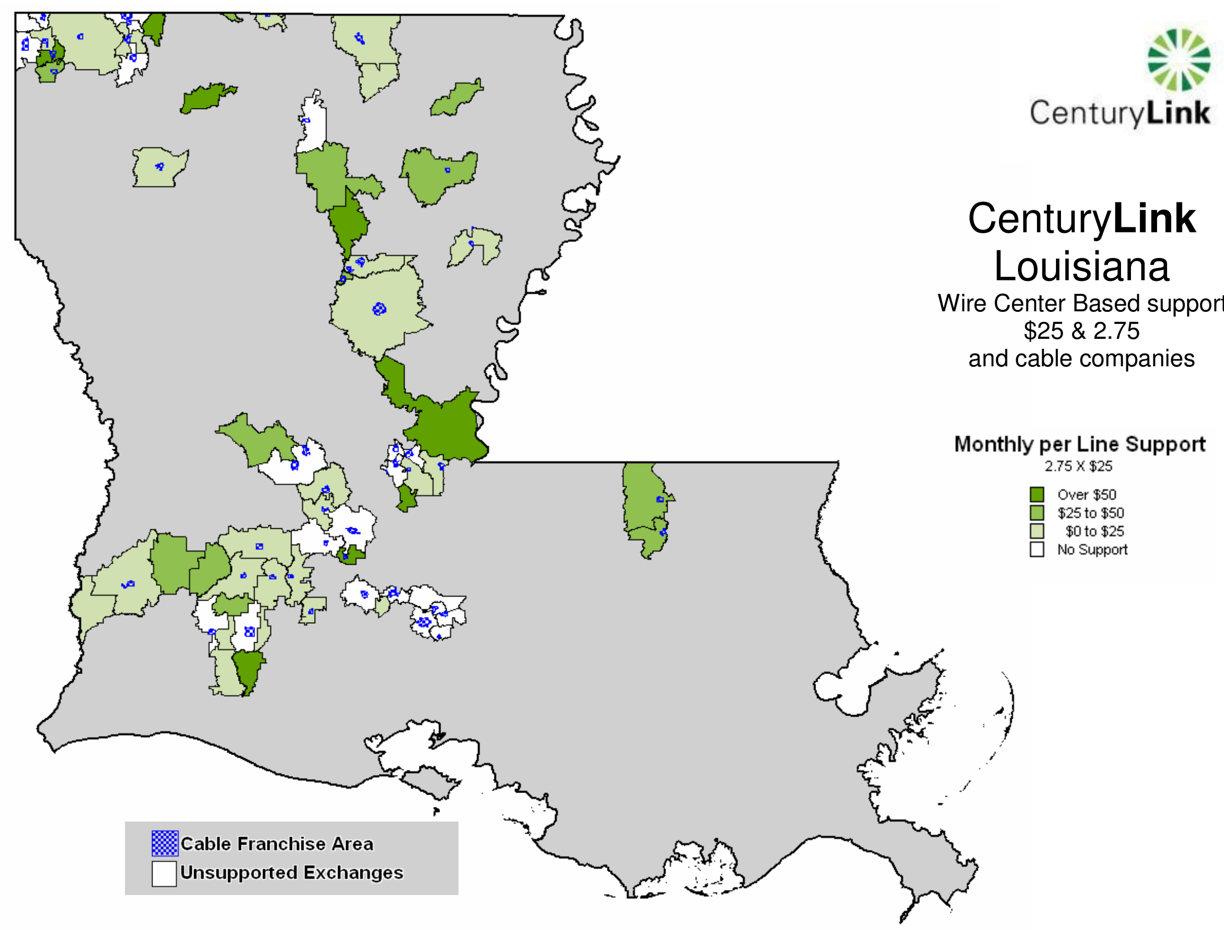
Over $50
$25 to $50
$0 to $25
No Support


CenturyLink
CenturyLink
Louisiana
Wire Center Based support
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Over $50
$25 to $50
$0 to $25
No Support
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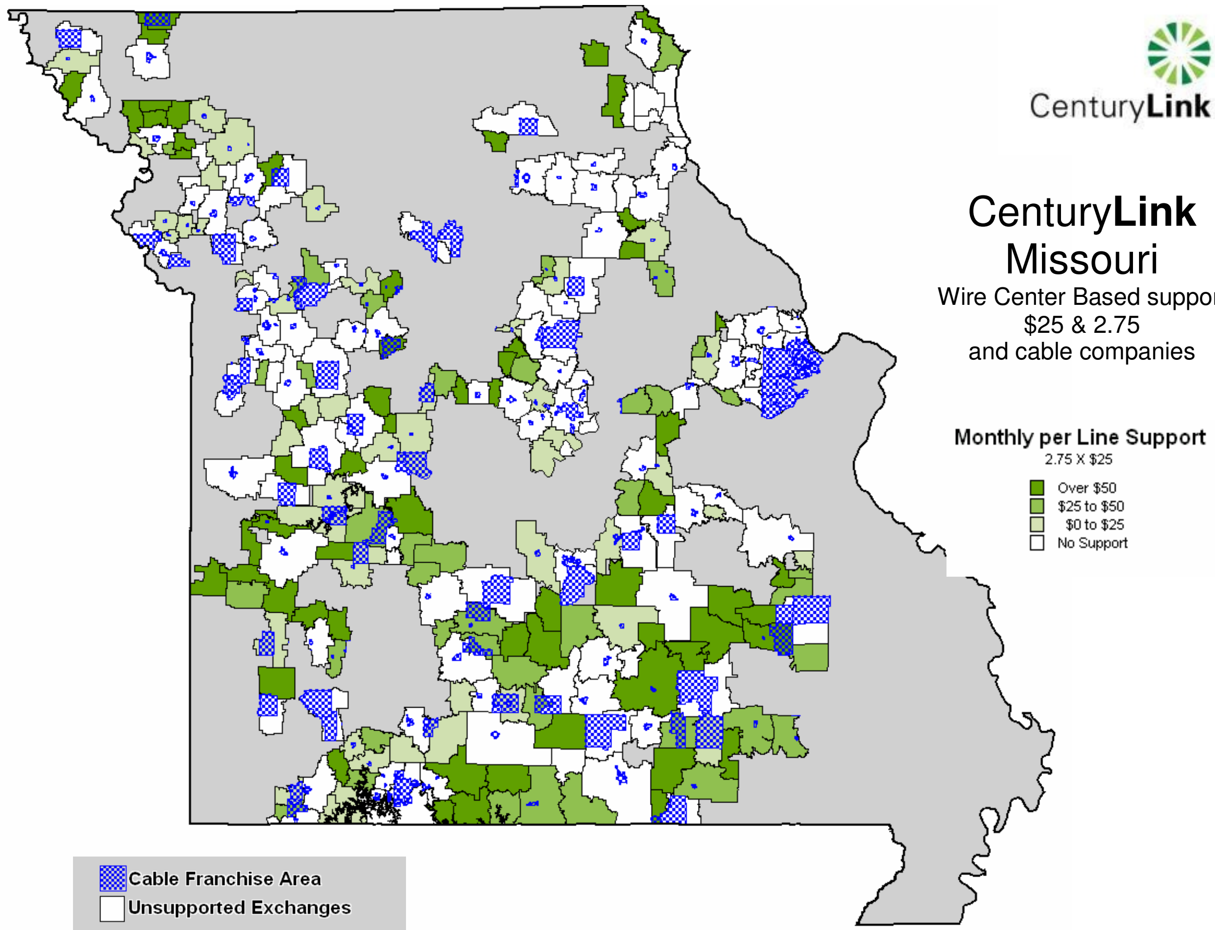
Unsupported Exchanges


CenturyLink
CenturyLink
Missouri
Wire Center Based support
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and cable companies
Monthly per Line Support
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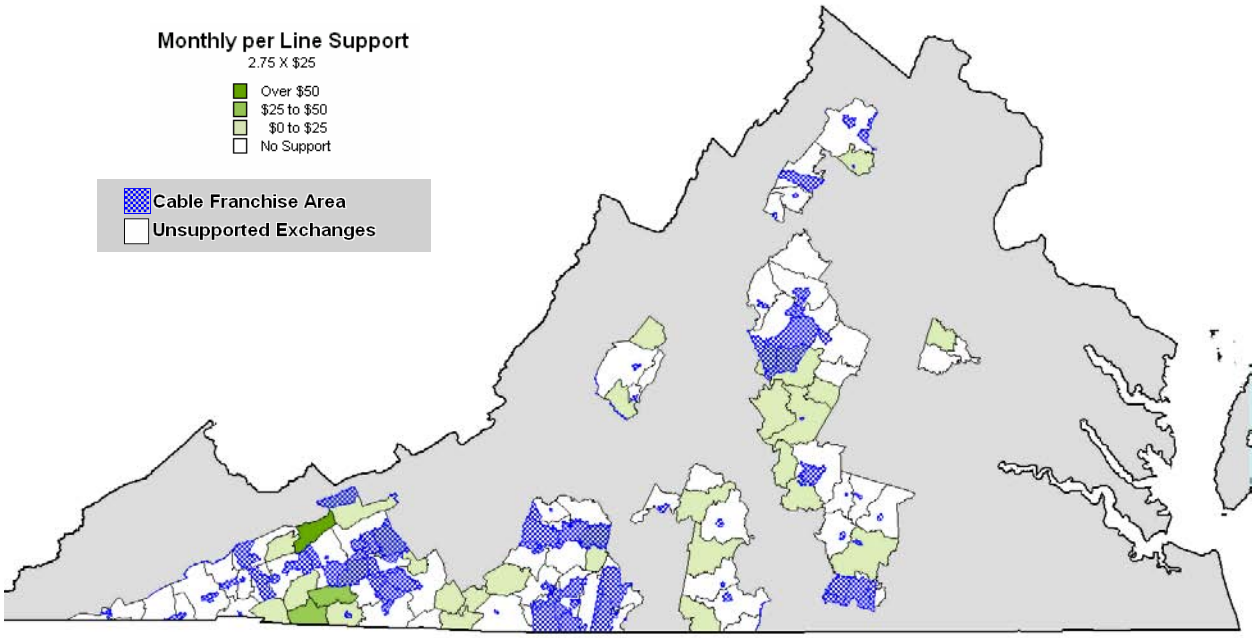
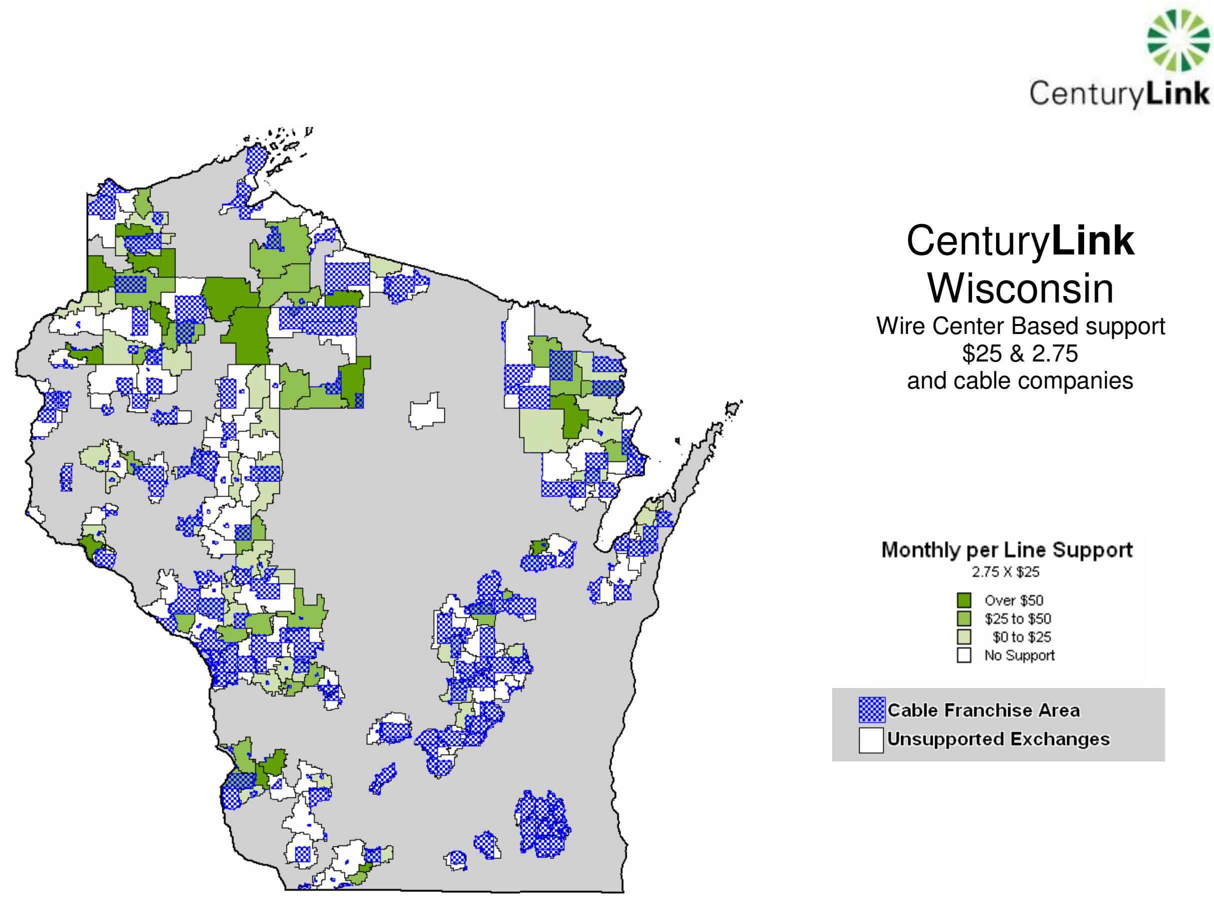
Over $50
$25 to $50
$0 to $25
No Support
Cable Franchise Area
Unsupported Exchanges

CenturyLink
Virginia
Wire Center Based support
$25 & 2.75
and cable companies




CenturyLink
CenturyLink
Wisconsin
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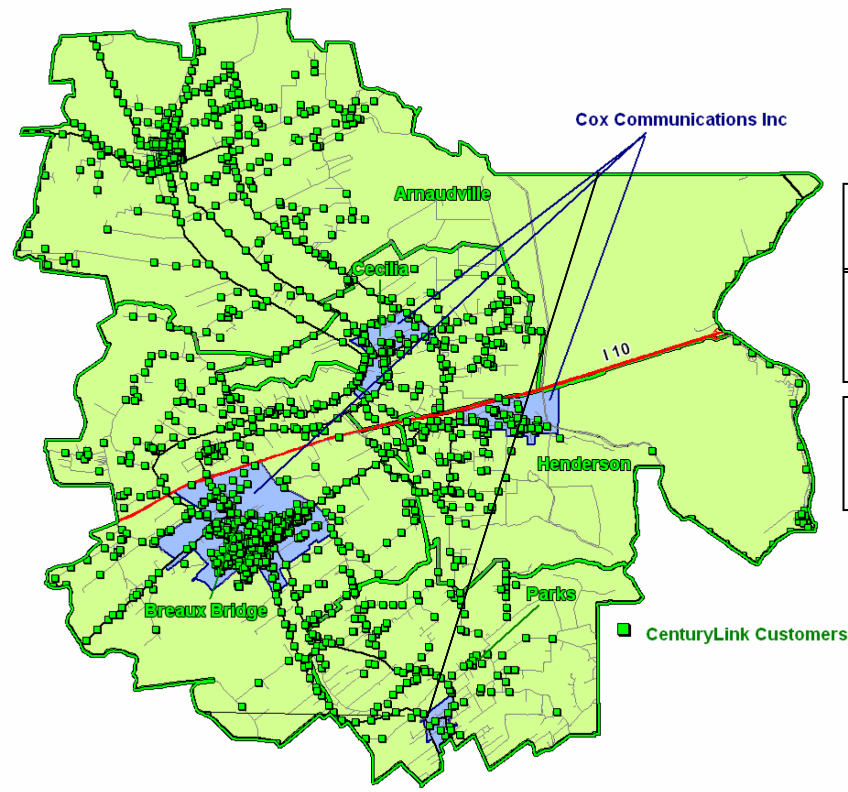
Over $50
$25 to $50
$0 to $25
No Support
Cable Franchise Area
Unsupported Exchanges

ATTACHMENT C

CenturyLink of South East Louisiana and Cox Communications



The green is a map of the exchange boundaries provided by CenturyTel of Southeast Louisiana

The blue boundaries are the Cox franchise serving area from Media Prints developed
By the Janis Group.

Density Analysis:
Cox = 242 Customers per square miles
Southeast Louisiana = 35 Customers per square mile

Brookneal, Virginia
2,600 Access Lines